IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1683 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAGHUBHAI M DESAI

Versus

VINAY VHAS, IAS

Appearance:

MR LATHIGARA FOR MB GANDHI for Petitioners

MR A.D. OZA, G.P. WITH MR. UMESH TRIVEDI, AGP for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 20/04/2000

ORAL JUDGEMENT

Whether removal of petitioners from the office of councillors of Ghatlodiya Nagarpalika by the order of respondent No. 1, Director of Municipalities, dated 3.3.1999, in exercise of powers, under Section 37, of the

Gujarat Municipalities Act, 1963 (`the Act' for short) on the ground of irregularities and indulging in giving employment to the close relatives, without any procedure and unauthorisedly, is short, but significant question which has been raised before this court in this petition under Article 226 of the Constitution of India.

2. A few material facts giving rise to this petition are narrated. At the outset, the petitioners were councillors of Ghatlodiya Nagarpanchayat and petitioner No. 1 was the President, at the relevant time, whose term expired long before and the terms of membership i.e. office of councillors expires around December this year, as stated at the Bar. The respondent is the Director of Municipalities who had initiated proceedings under Section 37 of the Act by issuing notice dated 12.1.1999. One notice was addressed to the President and the Member, petitioner No. 1 and the second notice of the same date was served on other petitioners. Show cause notice under Section 37 was replied. Written submissions were made. After considering the facts and circumstances and exercising the powers under Section 37 of the Act, respondent No. 1, Director of Municipalities passed the impugned order on 3.3.1999 holding that the petitioners are guilty of misconduct in the discharge of their duties and indulgence in irregularities which is under challenge in this petition.

3. Section 37 empowers the State Government to remove from office councilor, any President or Vice President of the Municipality. Respondent No. 1 has exercised powers under Section 37 of the Act. Section 37 of the Act, therefore, may be considered at this stage which reads thus:-

"(1) The State Government may remove from office:

(a) any councillor of a municipality (on its own motion or on receipt of a recommendation of the municipality in that behalf supported by a majority of the total number of the then councillors of the municipality, or

(b) any president or vice president of municipality,

if, after giving the councillor, president or as the case may be vice-president an opportunity of being heard and giving due notice in that behalf to the municipality after making such inquiry as it deems necessary, the State Government is of

the opinion that the councillor, president or as the case may be, vice president has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or has become incapable of performing his duties under this Act.

(2) A president or vice president removed under sub-section - (1) shall not be eligible for re-election as a president during the remainder of the term of the municipality."

4. It could very well be visualised from the aforesaid provisions that after making enquiry, if the State Government is satisfied that:

(i) the councillor or Vice President or President of the Municipality has been guilty of misconduct in discharge of his duties or

(ii) any of the disgraceful conduct or

(iii) has become incapable of performing his duties

(iv) a President or Vice President removed under sub-section (1) shall not be eligible for re-election as President during the remainder term of the municipality.

The impugned order of removal of the petitioners has been recorded by the respondents in exercise of statutory powers.

5. The learned advocate for the petitioners, Mr. Lathigara, has questioned the impugned order and has raised the following contentions:

(i) that it is in breach of principles of natural justice;

(ii) that it is a non-speaking order;

(iii) that material documents relied on were not supplied to the petitioners;

(iv) that the reply given by the petitioners in response to the show cause notice is not considered;

(v) that it is based on conjectures and surmises, in absence of any clear evidence.

(vi) that the enquiry as contemplated under Section 37 of the Act is not done.

6. The aforesaid contentions have been seriously countenanced by the learned Government Pleader Mr. A.D. Oza and he has raised also further submissions:

(i) that the enquiry as contemplated under Section 37 of the Act was conducted;

(ii) that there was no breach of the principles of natural justice;

(iii) that the impugned order is justified;

(iv) that the petitioners appointed their near and dear and close family members in the municipality's service without any resolution, sanctioned strength, permission of the Government and any public advertisement and that such an exercise is nothing but misconduct on the part of the councillors who are petitioners before this court and therefore the impugned order is fully justified.

7. Both the learned counsel have been heard at great length. Case laws relied on by them have been dispassionately examined. The record is also examined and analysed and following contours and chronicles have remained unavoidable:

(i) that the petitioners are the councillors of Ghatlodiya Nagarpalika and respondent No. 1, IAS Officer, Mr. Vinay V. Shah, was director of Municipalities.

(ii) that respondent served show cause notice to the petitioners for giving employment and appointing casual labourers;

(iii) that at the time of show cause notice under Section 37 of the Act, 10 labourers and daily wagers were working who are appointed by the petitioners. The notice as well as the impugned order show the relationship of the petitioners with the employees engaged by them.

S.No.	Date of appoint-	Name & Designation of employee	Name of Member	Relationship of employee

	ment		with Member	
1.	1.1.97	Thakor R. Bhikhaji Keyman	Manguben B. Thakor	Son
2.	1.10.97	Parmar Rajeshbhai Govindbhai Mukadam	Kantaben G. Parmar	Son
3.	1.11.97	Thakor R. Amrutji Librarian	Shardaben A. Thakor	Daughter
4.	1.3.98	Thakor D. Bhikhaji Junior Clerk	Manguben	Son
5.	1.3.98	Bharwad H. Kanjibhai Supervisor (Safai)	Kanjibhai S. Dabi	Son
6.	1.8.96	Bharwad B. Ramjibhai Keyman	Kanjibhai S. Dabi	Niece
7.	1.10.97	Parmar R. Bhagwandas Mukadam	Kantaben G. Parmar	Niece
8.	5.2.98	Thakor R. Kesaji Tempo Driver	Chaturji A. Thakor	Niece
9.	1.9.98	Ashok M. Thakor Peon	Mansangji Thakor	Son
10.	1.9.98	Dharmendra A. Thakor Safai worker	Shardaben A. Thakor	Son

8. Petitioner No. 1 was President at the relevant time and he had given employment to his son and in case of other petitioners, the date of employment of the relatives and close relationship between the employees and the petitioners are highlighted in a tabular form:

(i) that all the employees employed by the petitioners while in the office of the councillors are from close relatives;

(ii) that resolution of the Corporation was not passed;

(iii) that the permission of the Government was not obtained;

(iv) that the previous permission was required for the creation of the staff. Not only that, request of the Municipality for creation of the staff in the establishment was made since long, before the appointment came to be made, was not accepted that it was not passed or recorded or decided in the Meeting of the General Board;

(v) that the enquiry was held as required under Section 37 of the Act;

(vi) that the personal hearing was given. Not only that, written submissions were made before the respondent No. 1, at the time of hearing.

(vii) that the allegations are made of mala fide or mis-use against one Mr. Amit Shah, Minister, who is not impleaded as a party for the reasons not known to the court. Some allegations of mala fide does not take the maker of the allegations any further, without any material supporting it.

(viii) that it was nothing but a personal gain, misusing and abusing the power by employing the kith and kins. That even the petition does not clearly state that the persons who were appointed were not relatives. Therefore, the vague submissions would not operate as an added qualification for the success of the case of the petitioners.

(ix) that the requisite documents on which reliance was placed by the respondent, Director of Municipalities, before passing the impugned order is found to have been supplied.

(x) that after the service of show cause notice, adjournment was sought before respondent No. 1 on the ground that lawyers were required to be engaged by the petitioners and adjournment was granted. Written submissions were filed. The

petitioners were also given an opportunity of hearing.

(xi) that it may also be noted that in the reply to the show cause notice, the petitioners also stated that they started discharging the employees and most of them were discharged. This means that close relatives of the petitioners were obliged and unnecessary gain was given to them by using the office of councillors and on being realised, started discharging employees, which means that the petitioners were satisfied that the appointments of the employees had not been made regular in order and validly.

9. The aforesaid grounds and contentions raised before this court are required to be taken up simultaneously as they are inter-connected and inter-related and it would also prevent tautology of the narration of the facts.

10. It may not be gainsaid that the statutory enquiry contemplated by the provisions of Section 37 of the Act is sine qua non before exercising powers under Section 37 of the Act and for holding the councillors as disqualified as per the provisions of Section 11 of the Act. It would be, at this stage, profitable to refer to the provisions of Section 11(2)(c) which reads as under:-

"(c) - who, save as hereinafter provided, has directly or indirectly, by himself or his partner any share or interest in any work done by order of a municipality or in any contract or employment with or under or by or on behalf or a municipality."

11. So if a councillor or an elected office bearer of the municipality is found guilty of the misconduct, disgraceful conduct or who has become incapable of performing his duties under the Act by observing and holding the necessary statutory procedures prescribed under Section 37 of the Act, the Government is empowered to remove such persons and declare them disqualified as per the provisions of Section 11 of the Act.

12. The contention that principles of natural justice are not maintained and observed by the respondent before passing the impugned order is, prima facie, alluring and attractive but in the facts and circumstances of the present case is not acceptable. There cannot be any

dispute about the fact that the authority is bound to observe the principles of natural justice and also statutory provisions prescribed before exercise of the powers. Nothing has been, successfully, pointed out on behalf of the petitioners that the statutory provisions are not established. The submission that principles of natural justice are not observed is founded upon three aspects: (i) that opportunity of hearing is not given before respondent No. 1; (ii) that the documents in the form of report of the Chief Officer and other papers were not supplied and (iii) that the application for adjournment before the respondent was granted and time sought was given for making submissions.

13. The aforesaid three premises upon which submission is founded, cannot be said to have been violated. In fact, the documents on which reliance is placed had been supplied to the petitioners bearing in mind the proceedings which occurred before respondent No. 1, before he passed the impugned order that sufficient opportunity of hearing was afforded to them. It cannot be accepted that the principles of natural justice were not followed. Therefore, the contention that there was violation of principles of natural justice before passing the impugned order is vitiated and is, totally, meritless and is required to be rejected.

14. Any action taken before the authority which is vested with the statutory power has to be examined and analysed keeping in mind two parameters: (1) that the impugned action or order must be within the scope of authority conferred by law and (2) it must be just and reasonable. No doubt, if the action before the authority, much less quasi-judicial authority, is found to be lacking justness or reasonableness, it can be interfered with. However, if any action is taken within the statutory authority and the powers and within the just and reasonable exercise of the procedure established by law, it cannot be said to be unjust and unreasonable requiring interference by this court.

15. No doubt, it is settled proposition of law that the principles of natural justice are required to be strictly followed not only by the courts, judicial and quasi judicial authorities but even by administrative authorities. However, it may be mentioned that the extent of the severity and the size of powers and procedure cannot be moulded or made by a straight jacket formula.

16. Compulsion of hearing before passing the impugned order is important criteria of the principle "audi alteram partem" and it could apply to judicial and quasi judicial procedures. Let us remember the well known decision on this principle RIDGE VS. BALDWIN in which it has been held that the principles of natural justice are also applicable in case of administrative orders. Lord Denning has also observed that it is well settled that a statutory body which is entrusted by a statute with a direction, discretion, must act fairly, it does not matter whether its functions are judicial or quasi judicial or even administrative. Even in India after the decision in the case of MANEKA GANDHI VS. UNION OF INDIA reported in AIR 1978 SC 597 it has been clearly laid down that the frontiers between the judicial and quasi judicial taken on one hand and the Executive and administrative on the other hand, virtually, has no any intervening boundary. Our view that principles of natural justice apply only to judicial and non-judicial proceedings is a matter of relics of past. It applies to all proceedings.

17. Audi alteram partem means that person who is likely to be visited with civil and other consequences must be given an opportunity of hearing. The question which requires to be considered is as to what should be the extent, degree, measure and severity is the same in all proceedings to arrive at or take a varied form depends upon the charges and imputations. In this behalf no any straight jacket formula can be evolved.

18. At this stage, reliance placed on the case law requires consideration. On behalf of the petitioner the learned advocate has placed reliance on following case laws which may be highlighted:

1. Unreported decision of this court rendered in Special Civil Application No. 234 of 1999 decided on 7.3.2000 (Coram: M.R. Calla, J) and this decision is relied on for the purpose of showing that non-supply of important documents relied upon by the authority would vitiate the impugned order and the action of the authority.

2. PRABHODHRAI DHIRAJRAM NAYAK VS. DIST. PANCHAYAT, SURAT & ORS. reported in 1983(2) G.L.R. 1220. Relying on this decision, it has been contended that the important document like enquiry report on which the authority relies including the preliminary report must be supplied to the petitioner and if it is not done, it would infract the principles of natural justice.

3. CHIMANLAL R. PATEL VS. ANAND MUNI. reported in 1983(1) G.L.R. 67, Division Bench decision of this court

4. MUKESHBHAI RAJENDRABHAI SHAH VS. ADDL. DEVELOPMENT COMMISSIONER & ORS. reported in 1999(3) G.L.R. 2554 -

Reliance is placed on the aforesaid decisions virtually on the same ground that the authority while passing the adverse order and relying on the documents is obliged to consider whether such documents are supplied and whether what will be the effect of non-supply of it.

Relying on the aforesaid case laws it was argued that the impugned order is vitiated and is not sustainable. This submission itself is not sustainable in light of the facts and circumstances of the case. It cannot be said, upon analysis and evaluation of the record, that the petitioners have suffered or that there is any violation of principles of natural justice or doctrine of audi alteram partem.

Having gone through the entire text and tenor of the impugned order, it cannot be said, even for a moment, that it is not a speaking order. What is contemplated by statutory provisions of Section 37 is the enquiry, which aims at ascertaining as to whether the allegation of misconduct, misfeasance, disgraceful conduct of any elected representative of the public is borne out, is justiciable or not. In order to reach such a conclusion, the authority is obliged to provide sufficient opportunity of hearing to the other side and by holding an enquiry in terms of section 37, the contention that it is not observed is not acceptable in view of the aforesaid observations and the record of the present case.

In the opinion of this court all the contentions raised on behalf of the petitioners are without any merit and the challenge against the impugned order is without any substance and therefore, this petition deserves to be rejected. Rule is discharged with no order as to costs.

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